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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,637

Applicant(s)

POTTS ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14,30 and 39 is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-29, 31-38 and 40-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 – 41 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 – 7, 10, 13, 15, 17 – 23, 26, 29, 31 – 33 and 38 are rejected under 35 U.S.C. 102(a) as being anticipated by Yahiaoui et al. (WO 98/10134).

With respect to claim 1, Yahiaoui et al. (hereinafter "Yahiaoui") discloses a personal care absorbent article comprising an outer cover layer, a liner layer and a containment layer between the outer cover and the liner layer, wherein at least one of the layers comprises a porous nonwoven web material treated with a density modulator, wherein the porous nonwoven web material comprises a multilayer laminate having a porosity gradient with pore size increasing from one side of the porous nonwoven web material to an opposite side of the porous nonwoven web material as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Art Unit: 3761

Yahiaoui incorporates the reference of Bornslaeger (US 4,374,888) on page 10, lines 9 – 13 which discloses the personal care article comprising an outer layer (14), an liner layer (12) and a containment layer (16) between the outer cover and the liner layer as set forth in figure 1.

Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses the personal care article comprising a porous nonwoven web material comprising a multilayer laminate having a porosity gradient with pore size increasing from one side of the porous nonwoven web material to an opposite side of the porous nonwoven web material as set forth in col. 6, lines 60 – 65. Both layers (22) and (24) are porous layers with the pore size in layer (22) being greater than the pore size in layer (24). When considering both porous layers, a first pore in layer (24) followed by a consecutive pore in layer (22) would meet the claimed limitation of a porosity gradient within the nonwoven web material.

As to claims 2, 6, 10, 18, 22, 26 Yahiaoui discloses the density modulator is applied to the liner layer, the containment layer or both as set forth on page 2, lines 20 – 23. Yahiaoui discloses that the density modulator may be applied to a multilayer laminate on page 10, lines 9 – 13, which would include the liner layer, the containment layer and the outer cover as previously disclosed by Bornslaeger.

With reference to claims 3 – 5, 7, 19 – 21, 23 and 33 Yahiaoui discloses the density modulator being applied in a concentration of up to about 20%, between about 5% and 15%, or between about 8% and 12% by weight of the liner layer as set forth on page 11, lines 3 – 7.

Art Unit: 3761

As to claims 13, 29 and 38 Yahiaoui discloses an absorbent article wherein the porous nonwoven web material comprises a material selected from the listed group as set forth on page 3, lines 2, lines 27 – 30.

With respect to claims 15, 31 Yahiaoui discloses that the density modulator comprises alkyl glycoside as set forth on page 2, lines 34 – 36.

As to claim 17, see the rejection of claim 1. Additionally, Yahiaoui discloses a catamenial device as set forth on page 2, lines 20 – 30.

With reference to claim 32, see the rejection of claim 1. Bornslaeger teaches a porous synthetic substrate as set forth in the abstract and in col. 5, lines 19 – 35.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 – 9, 16, 24 – 25, 34 – 35 and 40 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yahiaoui et al. (WO 98/10134).

The difference between Yahiaoui and claim 8 is the provision that the density modulator is applied to the containment layer at a specific concentration.

Yahiaoui discloses that the density modulator is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Art Unit: 3761

It would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

With reference to claims 9, 24 – 25 and 34 – 35, see the rejection of claim 8.

Regarding claims 16, 39 and 40, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use) which includes a wound dressing, a sanitary pad and/or a tampon.

Claims 11 – 12, 27 – 28 and 36 – 37 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yahiaoui.

The difference between Yahiaoui and claim 11 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer which is identical to that claimed by the subject application. Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it would be inherently disclosed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui. Further, the applicant has not clearly supported the statement that red blood cells are not lysed by the density modulator of the claimed invention. The applicant

Art Unit: 3761

states that the red blood cells are probably not effectively lysed which would lead one to believe that some of the red blood cells are lysed.

With reference to claim 12, see the rejection of claim 11. Again, the same density modulator and concentration that is being used in the claimed invention has been disclosed by Yahiaoui. Therefore, while the exact thickness is not disclosed, it would be inherent that the layer would at least increase in thickness. And, this being the case, even if the thickness is not exactly 12%, the general conditions of the claim has been disclosed by the prior art, and it would only require a level of ordinary skill in the art to determine the optimum or workable range.

Regarding claims 27 and 36, see the rejection of claim 11.

With reference to claims 28 and 37, see the rejection of claim 12.

Allowable Subject Matter

Claims 14, 30 and 39 allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3761

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
December 1, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
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